IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 18436 of 2000(T)

PETITIONER:

MANAGER, SARDAR VALLABHAI
PATTEL MEMORIAL HIGH SCHOOL,
VADAKKUMTHALA, KARUNAGAPPALLY.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. **STATE OF KERALA,**
   REP. BY SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **SMT.M.S.RAJALEKSHMY, HIGH SCHOOL ASSISTANT,**
   S.V.P.M.HIGH SCHOOL,
   VADAKKUMTHALA, KARUNAGAPPALLY.

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   KOLLAM 691 009.

4. **THE DISTRICT EDUCATIONAL OFFICER,**
   KOLLAM 691 013.

5. **THE HEADMISTRESS,**
   S.V.P.M.HIGH SCHOOL,
   VADAKKUMTHALA, KARUNAGAPPALLY.

BY GOVERNMENT PLEADER SMT.TRESA RANI
SMT.AYSHA YOUSEFF - R2
SRI.S.MOHAMMED AL RAFI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.18436/2000

ORDER ON CMP. NOS.30573/2000, CMP.52112/2000 IN OP. 18436/2000

DISMISSED

23.10.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LEAVE APPLICATION OF THE 2ND RESPONDENT SANCTIONED BY THE 4TH RESPONDENT FOR THE PERIOD 5.8.96 TO 22.8.96.

EXT.P1(a):- COPY OF THE LEAVE APPLICATION OF THE 2ND REPSO SANCTIONED BY THE 4TH RESPONDENT FOR THE PERIOD FROM 23.8.96 TO 13.9.96.

EXT.P1(b):- COPY OF THE LEAVE APPLICATION SANCTIONED BY THE 4TH RESPONDENT FOR THE PERIOD FROM 23.9.96 TO 31.3.906 IN FAVOUR OF 2ND RESPONDENT.

EXT.P1(c):- COPY OF THE LEAVE APPLICATION OF THE 2ND RESPONDENT SANCTIONED BY THE 4TH RESPONDENT FOR THE PERIOD 1.11.96 TO 15.11.96.

EXT.P1(d):- COPY OF THE COMMUNICATION NO.B5/13976/96 DT. 5.11.96 OF THE 4TH RESPONDENT ISSUED TO THE PETITIONER.

EXT.P2:- COPY OF THE JUDGMENT DT. 1`3.1.99 IN OP. NO.12818/98 A OF THIS HONOURABLE COURT.

EXT.P3:- COPY OF THE ORDER NO.B3-2146/99 DT. 26.3.99 OF THE 3RD RESPONDENT ISSUED TO THE 2ND RESPONDENT AND OTHERS.

EXT.P4:- COPY OF THE ORDER NO.222/99 DT. 4.4.99 OF THE PETITIONER ISSUED TO SMT.MERYKUTTY ABRAHAM, SENIOR ASSISTANT-IN-CHARGE OF THE PETITIONER SCHOOL AND OTHERS.

EXT.P4(a):- COPY OF THE PROCEEDINGS OF THE HEADMISTRESS OF S.V.P.M.H.S., 5TH RESPONDENT TO THE 2ND RESPONDENT AND OTHERS.

EXT.P5:- COPY OF THE ORDER NO.222/99 DT. 4.4.99 SUBMITTED BY THE 2ND RESPONDENT, REFERRED TO IN THE ORIGINAL PETITION.

EXT.P6:- COPY OF THE ORDER NO.B5.16871/96 DT. 15.6.99 OF THE 4TH RESPONDENT ISSUED TO THE PETITIONER AND OTHERS.

OP. NO.18436/2000

EXT.P7:- COPY OF THE IST INFORMATION REPORT NO.189/99 DT. 12.6.99

REGISTERED BY THE PETITIONER BEFORE JUDICIAL 1ST CLASS MAGISTRATE COURT, KARUNAGAPPALLY.

EXT.P7(a):- COPY OF THE PRIVATE (COMPLAINT FILED BY THE PETITIONER BEFORE THE JUDICIAL 1ST CLASS MAGISTRATE COURT, KARUNAGAPPALLY BY THE PETITIONER AGAINST 2ND RESPONDENT ON 29.7.99.

EXT.P8:- COPY OF THE ORDER NO.B5.16871/96 DT. 28.3.2000 OF THE 4TH RESPONDENT ISSUED TO THE 2ND RESPONDENT AND OTHERS.

EXT.P9:- COPY OF THE ORDER NO.12/2000 DT. 4.4.2000 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P9(a):- COPY OF THE APPOINTMENT ORDER DT. 5.6.2000 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE NOTICE NO.B3/11809/99 DT. 27.4.2000 OF THE 3RD RESPONDENT ISSUED TO THE PETITIONER AND OTHERS.

EXT.P10(a):- COPY OF THE APPEAL FILED BY THE 2ND RESPONDENT BEFORE THE 3RD RESPONDENT ON 7.6.99.

EXT.P11:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT, DT. . 4.1.2000 IN CCC. NO.265/99 .

EXT.P12:- COPY OF THE ARGUMENT NOTE SUBMITTED BY THE PETITIONER BEFORE 3RD RESPONDENT DT. 6.5.2000.

EXT.P13:- COPY OF THE ORDER NO.B3-11809/99 K.DIS DT. 2.6.2000 OF THE 3RD RESPONDENT ISSUED TO THE PETITIONER.

EXT.P14:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT, DT. 15.3.2000 IN OP. NO.8223/2000.

<u>RESPONDENTS EXHIBITS</u>

EXT.R2(a):- COPY OF THE ORDER NO.B5-16871/97 DT. 1.3.97 ISSUED BY THE 4TH RESPONDENT.

EXT.R3(b):- COPY OF THE LETTER NO.B5-708/97 DT. 11.2.97 ISSUED BY THE 4TH RESPONDENT.

EXT.R2(c):- COPY OF THE MEMO CHARGES NO.231/99 DT. 31.5.99 OF THE PETITIONER.

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EXT.R2(d):- COPY OF THE STATEMENT OF ALLEGATION

EXT.R2(e):- COPY OF THE REFER CHARGE SHEET IN CR 189/99 OF CHAVARA POLICE STATION.

EXT.PR2(f):- COPY OF THE ORDER NO.7210/99 DT. 13.12.99 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

EXT.R2(g):- COPY OF THE REPRESENTATION DT. 9.8.99 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 4TH RESPONDENT

EXT.R2(h):- COPY OF THE ACKNOWLEDGEMENT CARD RECEIVED BY THE 1ST RESPONDENT.

EXT.R2(i):- COPY OF THE REMINDER DT. 18.10.2000 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.R2(j):- COPY OF THE ACKNOWLEDGEMENT CARD RECEIVED BY THE 2ND RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.18436 OF 2000

Dated this the 23rd day of October, 2007

JUDGMENT

The petitioner, the manager of an aided school, challenges the direction contained in Ext.P13 issued by the Director of Public Instructions, requiring the District Educational Officer to recover from the him the amounts that would be payable to a teacher, M.S.Rajalekshmi, in terms of that order.

2. The DPI found that the placement of the teacher under suspension was liable to be revoked and that the teacher was entitled to payments.

3. The provisions in Section 8 and Chapter III Rule 7, K.E.R. has been essentially ordered by the DPI by directing the DEO to take proceedings for recovery. Thous provisions for such action essentially depends upon the conduct that could be attributable to the manager or the educational agency as referred to therein. The manager is entitled to a reasonable opportunity of being

heard and to show cause the action that may be proposed against him. He is entitled to notice of the grounds on which such action is taken. Obviously, no such proceedings have preceded the issuance of Ext.P13 by the DPI, which contains a clear finding at his level that the petitioner is liable to be proceeded with. That is clearly unsustainable.

Having regard to the totality of the facts and circumstances emerging out of the materials on record, I do not find any ground to sustain the direction of the DPI contained in the last sentence of Ext.P13. Ext.P13 is accordingly quashed. Any consequential action taken on the basis of the impugned orders in this case, following that direction of the DPI, would also stand quashed. The writ petition is allowed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.18436 OF 2000

JUDGMENT

23rd OCTOBER, 2007.

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